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E O 12065: GDS 6/25/88 (THEBERGE,J.D.) OR-M
TAGS: SHUM PINS CI
SUBJECT: SUGGESTED CHANGES FOR DRAFT CHILE CERTIFICATION REPORT

REFS: A) SANTIAGO 3795 B) SATATE 178534
C) CHILE CERTIFICATION DRAFT SECTION ON INTERNATIONAL TERRORISM
TRANSMITTED BY SERVICE TO THEBERGE MEMO DATED JUNE 15.

1. [redacted] ENTIRE TEXT.

2. EMBASSY SANTIAGO HAS SERIOUS RESERVATIONS ABOUT THE CHILE CERTIFICATION REPORT DRAFT AND STRONGLY URGES THE DEPARTMENT NOT REPEAT NOT TO SUBMIT IT IN THE FORM RECEIVED BY US AS PART OF THE ADMINISTRATION'S PRESENTATION. TACTICALLY, FOR PURPOSES OF ACHIEVING CERTIFICATION. WE WOULD PREFER A SHORTER STATEMENT, SOMEWHAT ALONG THE LINES OF FORMER DAS JOHN BUSHENLL'S TESTIMONY IN SUPPORT OF REMOVING SOME OF THE SANCTIONS AGAINST CHILE BEFORE CONGRESS ON MARCH 21, 1981. IF THIS IS NOT AN ACCEPTABLE ALTERNATIVE, HOWEVER, THEN WE RECOMMEND WORKING FROM THE REVISED TEXT BELOW. OUR OBJECTIONS TO THE ORIGINAL TEXT GO BEYOND MINOR FACTUAL AND STYLISTIC SHORTCOMINGS AND INSTEAD CENTER UPON ITS OVERALL TONE. IT IS OUR BELIEF THAT, IF THIS SECTION OF THE REPORT IS SUBMITTED TO

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CONGRESS IN ITS PRESENT FORM, IT WILL SERIOUSLY UNDERMINE

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THE CASE FOR CERTIFICATION, WHICH WE BELIEVE--AS DOES THE ADMINISTRATION--IS IN THE NATIONAL INTEREST OF THE UNITED STATES AND CAN BE FACTUALLY SUPPORTED WITHIN THE LEGISLATIVE RESTRICTION. SPECIFIC JUSTIFICATIONS FOR RECOMMENDED CHANGES, KEYED BY PARAGRAPH, FOLLOW THE REVISED DRAFT.

3. EMBASSY SANTIAGO'S RECOMMENDED REVISED DRAFT:
LETELIER/MOFFIT CASE
A) THE EXECUTIVE BRANCH HAS NO INFORMATION WHICH SUGGESTS THAT *THE GOVERNMENT OF CHILE IS AIDING OR ABETTING INTERNATIONAL* TERRORISM. BETWEEN 1974 AND 1976 TWO PROMINENT CHILEAN ANTI-REGIME EXILES WERE ASSASINATED, GEN. CARLOS PRATTS IN BUENOS AIRES AND EX-AMBASSADOR ORLANDO LETELIER IN WASHINGTON, AND ANOTHER, FORMER VICE PRESIDENT BERNARDO LEIGHTON, WAS WOUNDED IN ROME. CHARGES HAVE BEEN MADE THAT AGENTS OF THE GOVERNMENT OF CHILE WERE RESPONSIBLE. THE GOVERNMENT OF CHILE, DENIED RESPONSIBILITY FOR ANY OF THOSE TERRORIST ACTS. THE EXPLOSION OF A BOMB ATTACHED TO LETERLIER'S CAR ON SEPTEMBER 21, 1976, ALSO KILLED AMERICAN ASSOCIATE, RONNI KARPEN MOFFITT. THE INVESTIGATION OF THEIR DEATHS AND THE SUBSEQUENT PROSECUTION OF SOME OF THOSE WHO WERE BELIEVED RESPONSIBLE ATTRACTED EXTENSIVE INTERNATIONAL AND DOMESTIC PUBLICITY.
B). DESPITE THE GOVERNMENT OF CHILE'S DENIAL OF RESPONSIBILITY, THERE WERE CHARGES THAT OFFICIALS OF THE CHILEAN INTELLIGEENCE AGENCY DINA (DIRECCION DE INTELIGENCIA NACIONAL) HAD ORDERED THOSE ASSASSINATIONS. DINA HAD BEEN ESTABLISHED IN 1974 WITH ARMY COLONEL MANUEL CONTRERAS SEPULVEDA AS HEAD. IN AUGUST 1977, MARKING TERMINATION OF MOST OF THE MORE SEVERE HUMAN RIGHTS VIOLATIONS THAT HAD CHARACTERIZED THE PRECEDING POST-REVOLUTIONARY YEARS, DINA BECAMSE THE CNI (NATIONAL INFORMATION CENTER) WITH MORE RESTRICTED POWERS. IN OCTOBER OF THAT YEAR, CONTRERAS WAS REPLACED AS HEAD OF CNI, AND ON MARCH 21, 1978,
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HE WAS FORCED INTO RETIREMENT.
C). PRIOR TO CONTRERAS' RETIREMENT , EFFORTS OF U S INVESTIGATORS RECEIVED LIMITED COOPERATION FROM CHILEAN AUTHORITIES IN ATTEMPTING TO TRACE THE LEADS OF THE LETELIER/MOFFITT ASSASSINATIONS. HOWEVER, SHORTLY AFTERWARDS THE GOVERNMENT OF CHILE ADOPTED A MORE FORTHCOMING POSITION. IN LATE FEBRUARY 1978, AFTER A LONG AND COMPLICATED INVESTIGATION, THE U S ATTORNEY'S OFFICE SUBMITTED FORMAL LETTERS ROGATORY REQUESTING THAT THE CHILEAN GOVERNMENT PRODUCE

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BEFORE A CHILEAN JUDGE TWO INDIVIDUALS, WHOSE NAMES AND PHOTOGRAPHS WERE SUPPLIED, FOR QUESTIONING REGARDING THEIR OBTAINING FALSE PARAGUAYAN PASSPORTS AND THEIR TRAVEL TO THE UNITED STATES ON OTHER PASSPORTS IN THE WEEKS IMMEDIATELY PRE-CEEDING THE ASSASSINATIONS. THE PHOTOGRAPHS WERE RELEASED TO THE MEDIA IN WASHINGTON AND IT QUCKLY DEVELOPED THAT ONE OF THE TWO INDIVIDUALS WAS AN AMERICAN CITIZEN, MICHAEL TOWNLEY, WHO HAD LIVED IN CHILE SINCE 1956. AFTER SEVERAL WEEKS THE GOVERNMENT OF CHILE RESPONDED, ASSURING US THAT TOWNLEY WOULD BE MADE AVAILABLE FOR QUESTIONING.
U.S. EFFORTS THEN SHIFTED TO GETTING TOWNLEY EXPELLED INTO OUR CUSTODY. ON APRIL 8, 1978, THE CHILEAN GOVERNMENT ACCEDED TO OUR REQUEST BY DELIVERING TOWNLEY TO U S AUTHORITIES AT SANTIAGO AIRPORT, WHERE HE WAS EXPELLED FROM CHILE.
D). TOWNLEY, CLAIMING TO HAVE BEEN AN OPERATIVE DINA SINCE 1974, ADMITTED HIS OWN INVOLVEMENT IN THE ASSASSINATION AND BECAME THE PRINCIPAL WITNESS AGAINST THE OTHERS WHO WERE LATER INDICTED. HIS TESTIMONY WAS MADE POSSIBLE BY A PLEA-BARGAINING WITH THE PROSECUTORS. BEFORE BEING WILLING TO TELL HIS STORY TO U S INVESTIGATORS, TOWNLEY ASKED TO BE RELIEVED OF A DINA OATH OF SECRECY. THE CHILEAN GOVERNMENT COOPERATED BY SENDING A SENIOR CHILEAN GENERAL, HECTOR OROZCO, TO WASHINGTON IN MID APRIL WHERE HE ABSOLVED TOWNLEY OF HIS

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SECRECY COMMITMENT WITH REGARD TO THE LETELIER ASSASSINATION.
E. SUBSEQUENTLY, A GRAND JURY SITTING IN THE DISTRICT OF

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COLUMBIA INDICTED A TOTAL OF EIGHT PERSONS AS A RESULT OF THE DEATHS OF ORLANDO LETELIER AND RONNI MOFFITT. IN ADDITION TO TOWNLEY AND THE THREE FORMER INTELLIGENCE OFFICERS OF THE DINA, THE GRAND JURY NAMED FIVE CUBAN EXILES LONG RESIDENT IN THE UNITED STATES. TWO OF THE LATTER HAVE NEVER BEEN LOCATED. THE OTHER THREE WERE BROUGHT TO TRIAL IN EARLY 1979. TWO WERE INITIALLY CONVICTED OF MURDER; THE THIRD FOR PERJURY AND MISPRISON OF FELONY. HOWEVER, A US APPEALS COURT REVERSED THE MURDER CONVICTIONS, AND RENDERED INADMISSIBLE IMPORTANT INCRIMINATING STATEMENTS MADE BY THE TWO DEFENDENTS ON THE GROUNDS THAT THEY HAD BEEN OBTAINED IN AN ILLEGAL MANNER. ON RETRIAL, THE TWO WERE THEN ACQUITTED OF MURDER, ALTHOUGH ONE OF THEM WAS FOUND GUILTY OF PERJURY.
F. IN AUGUST 1978, FOLLOWING THEIR INDICTMENTS BY THE US GRAND JURY FOR THE LETELIER/MOFFITT MURDERS, THE UNITED STATES GOVERNMENT REQUESTED THE PREVENTIVE DETENTION OF THE THREE FORMER DINA OFFICERS (MANUEL CONTRERAS, PEDRO ESPINOZA BRAVO, AND ARMANDO FERNANDEZ LARIOS) UNDER THE TERMS OF THE TREATY OF EXTRADITION BETWEEN CHILE AND THE UNITED STATES SIGNED IN 1902. THE CHILEAN GOVERNMENT QUICKLY HONORED THAT REQUEST AND RECEIVED OUR FORMAL EXTRADITION REQUEST ON [redacted]

SEPTEMBER 20, 1978. IN ACCORDANCE WITH CHILEAN LEGAL PROCEDURE, THE PRESIDENT OF THE CHILEAN SUPREME COURT, ISRAEL BORQUEZ, ASSUMED INITIAL RESPONSIBILITY FOR REVIEWING THE EVIDENCE AND DECIDING WHETHER THERE WERE SUFFICIENT GROUNDS TO JUSTIFY EXTRADITION. HE REVIEWED EVIDENCE SUBMITTED WITH THE EXTRADITION REQUEST AND TOOK TESTIMONY FROM WITNESSES IN CHILE. SWORN TESTIMONY BY CERTAIN CHILEAN OFFICIALS CONTRADICTED STATEMENTS THEY HAD GIVEN EARLIER TO US INVESTIGATORS. BROQUEZ ANNOUNCED HIS CONCLUSIONS IN MAY 1979. HE RECOMMENDED THAT EXTRADITION BE DENIED LARGELY ON THE GROUNDS THAT THE PROSECUTION'S CASE DEPENDED OVERWHELMINGLY ON THE DIRECT TESTIMONY OF MICHAEL TOWNLEY WHICH HAD BEEN GAINED THROUGH PLEA BARGAINING. PLEA BARGAINING TESTIMONY IS NOT ADMISSIBLE AS EVIDENCE UNDER CHILEAN JURISPRUDENCE; COOPERATION WITH PROSECUTORS MAY, HOWEVER, BE A MITIGATING FACTOR IN DETERMINING SENTENCE. BORQUEZ FURTHER ARGUED THAT TOWNLEY'S TESTIMONY HAD NOT BEEN SUFFICIENTLY CORROBORATED BY OTHER EVIDENCE. UNDER CHILEAN LEGAL PRACTICE THERE WAS AUTOMATIC REVIEW BY A FIVE-MAN PANEL OF SUPREME COURT JUDGES. ON OCTOBER 1, 1979, THE REVIEW PANEL AFFIRMED THE DECISION

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DENYING EXTRADITION. THE FINAL DECISION WENT BEYOND THE BORQUEZ RULING IN FINDING A SUBSTANTIAL PORTION OF THE EVIDENCE OFFERED BY THE UNITED STATES -- NOT LIMITED TO TOWNLEY TESTIMONY -- TO BE INADMISSIBLE IN CHILEAN COURTS, THEREBY SERIOUSLY AFFECTING THE PROSPECTS FOR LATER PROSECUTION IN CHILE. IT RECOMMENDED THAT ALL ASPECTS OF THE CASE BE INVESTIGATED FURTHER BY A MILITARY TRIBUNAL WHICH WAS ALREADY LOOKING INTO THE USE OF FALSIFIED OFFICIAL CHILEAN PASSPORTS IN CONNECTION WITH THE ASSASSINATIONS.
G. THE US GOVERNMENT'S LEGAL INVOLVEMENT WITH THE LETELIER/ MOFFITT CASE IN CHILE ENDED WITH THE DENIAL OF OUR EXTRADITION REQUEST. WHILE US AUTHORITIES DID NOT AGREE [redacted]

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THAT THE CHILEAN SUPREME COURT DECISION WAS WELL BASED, THERE WERE NO FURTHER AVENUES OF LEGAL APPEAL. THEN, AS A RESULT OF THE APPARENT FAILURE OF THE CHILEAN GOVERNMENT TO PURSUE ITS OWN INVESTIGATION IN A THOROUGH MANNER, WE INSTITUTED A SERIES OF SANCTIONS, BEGINNING ON NOV. 30, 1979, TO DEMONSTRATE THE DEGREE OF US CONCERN. SOME OF THESE MEASURES WERE LIFTED IN EARLY 1981, BUT THE IMPORTANT RESTRICTIONS ON MILITARY SALES AND TRAINING EXCHANGES REMAIN IN FORCE.
H. AS A FOREIGN GOVERNMENT WE DID NOT HAVE STANDING BEFORE THE MILITARY COURT INVESTIGATING THE CHARGES AGAINST THE THREE ARMY OFFICERS. THE LETELIER FAMILY, HOWEVER, HAS CLAIMED SUCH STANDING UNDER CHILEAN LAW, AND THEIR CLAIM WAS ACCEPTED BY THE MILITARY JUDGE.
I. IN JANUARY 1981, THE MILITARY JUDGE INVESTIGATING THE CONDUCT OF CONTRERAS, ESPINOZA, AND FERNANDEZ RULED TO CLOSE THE CASE ON THE GROUNDS THAT THERE WAS INSUFFICIENT ADMISSIBLE EVIDENCE TO BRING CHARGES AGAINST THEM. BY A 3 TO 1 VOTE, A FOUR-JUDGE APPEALS COURT, CONSISTING OF THREE MILITARY OFFICERS AND ONE CIVILIAN APPROVED CLOSING THE CASE. THE LETELIER FAMILY APPEALED THE DECISION TO THE SUPREME COURT.
J. ON JANUARY 14, 1982, THE SUPREME COURT REVIEW PANEL OVERRULED THE MILITARY COURT OF APPEALS AND DECIDED UNANIMOUSLY TO DENY FINAL CLOSURE OF THE CASE, FINDING THAT THE "INNOCENCE OF THE ACCUSED HAD NOT BEEN CLEARLY ESTABLISHED." INSTEAD, THE CASE IS LEFT PENDING AND CAN BE REOPENED IF NEW EVIDENCE IS BROUGHT FORWARD. LAWYERS FOR THE LETELIER FAMILY HAVE SAID PUBLICLY THAT THEY ARE GATHERING DDITIONAL INFORMATION AND

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WILL SEEK TO HAVE THE MILITARY INVESTIGATION RESUMED.
K. IN SUMMATION, ALTHOUGH INITIALLY RELUCTANT TO HELP, THE CHILEAN GOVERNMENT DID SUBSEQUENTLY AND APPROPRIATELY COOPERATE WITH AMERICAN LAW ENFORCEMENT OFFICIALS IN THE LETELIER/MOFFITT CASE BY EXPELLING MICHAEL TOWNLEY AND RELEASING HIM FROM THE RELEVANT DINA OATH OF SECRECY. IT IS DOUBTFUL THAT WE COULD HAVE OBTAINED THE INDICTMENTS OF AUGUST 1978 OR THE CONVICTIONS AT THE FIRST TRIAL WITHOUT

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SUCH COOPERATION. WITHIN CHILE THE MATTER HAS BEEN HANDLED THROUGH LEGAL CHANNELS AND PROCEDURES, FIRST BY THE SUPREME COURT IN THE EXTRADITION REQUEST, AND SUBSEQUENTLY THROUGH THE MILITARY COURT SYSTEM AND UP TO THE SUPREME COURT ON THE INVESTIGATION OF THE THREE CHILEANS. WHILE THAT INVESTIGATION HAS NOT RESULTED IN INDICTMENTS, ON THE GROUNDS OF INSUFFICIENT ADMISSIBLE EVIDENCE, THE SUPREME COURT HAS REFUSED TO CLOSE THE CASE, DESPITE THE DESIRE OF MANY CHILEANS WITHIN AND OUTSIDE THE GOVERNMENT TO FIND A LEGALLY BASED RATIONALE FOR NOT HAVING TO CONFRONT THE CENTRAL ISSUE OF DINA RESPONSIBILITY.
L. THE PRINCIPAL RATIONALE FOR THE DECISION OF THE SUPREME

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COURT IS NOT TO EXTRADITE WAS THAT PLEA-BARGAINES TESTIMONY IS NOT ADMISSIBLE IN A CHILEAN COURT. IN ADDITION, THE RELIABILITY OF TOWNELY AS A WITNESS HAS BEEN CALLED INTO QUESTION BY THE FACT THAT HIS TESTIMONY UNDER OATH IN CHILE WAS AT VARIANCE WITH WHAT HE SUBSEQUENTLY STATED IN THE UNITED STATES. THOSE WHO QUESTION THE TOWNELY TESTIMONY ALSO POINT TO THE LACK OF CONVICTIONS AT THE SECOND TRAIL OF THE CUBANS AS EVIDENCE THAT EVEN A U.S. COURT NO LONGER GAVE FULL CREDENCE TO HIS ACCOUNT.
M. U.S. AUTHORITIES CONCERNED WITH THE CASE SINCE ITS INCEPTION STILL ACCEPT THE ESSENTIAL VALIDITY OF TOWNLEY'S TESTIMONY.

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IN CHILE, THE CASE REMAINS PENDING UNTIL NEW EVIDENCE IS INTRODUCED TO WARRANT ITS CONTINUATION. END TEXT OF RECOMMENDED REVISED DRAFT.

4. JUSTIFICATIONS FOR OUR SUGGESTED REVISION OF THE DRAFT OF THE CHILEAN CERTIFICATION REPORT: OUR REVISIONS ARE BASED ON FOUR BASIC PREMISES: (A) ACCURACY AND CLARITY OF TEXT; (B)AVOIDANCE OF UNNECESSARY AND TENDENTIOUS ASSERTIONS; (C) THE ASSUMPTION THAT A FAVORABLE DECISION ON CERTIFICATION WOULD BE IN THE U S NATIONAL INTEREST; AND (D) EMBASSY OBJECTIONS TO OVERALL NEGATIVE TONE OF THE DRAFT. (WE HAVE NOT TAKEN THE TIME AND SPACE TO JUSTIFY MINOR AND/OR STYLISTIC CHANGES WHICH WE BELIEVE IMPROVE THE TEXT). JUSTIFICATIONS ARE KEYED TO BOTH LETTERED PARAGRAPH IN OUR REVISED TEXT AND BY APPROPRIATE NUMBER OF PARAGRAPH IN ORIGINAL TEXT.
--TITLE: WE RECOMMEND THAT THE TITLE "INTERNATIONAL TERRORISM" BE CHANGED TO THE "LETERLIER/MOFFITT CASE".
--PARAGRAPH A(1) IT SEEMS TO US THAT THE REVISION COVERS THE MAIN POINTS ABOUT OTHER TERRORIST ACTS WITHOUT BOGGING DOWN IN NEEDLESS DETAIL, PARTICULARLY IN VIEW OF THE SIX YEARS THAT HAVE PASSED SINCE THE LAST OF THEM. WE PARTICULARLY RECOMMEND DELETION OF THE LAST SENTENCE OF THIS PARAGRAPH FROM THE ORIGINAL DRAFT, SINCE IT IS OUR IMPRESSION THAT THE EVIDENCE SUPPORTING THE ALLEGATION OF OTHER PLANNED ASSASSINATIONS IS DEBATABLE.
--PARAGRAPH B(2). DELETION OF PART OF LAST SENTENCE WHICH FOLLOWS "...DINA/CNI...": WHEN GENERAL MENA SUCCEEDED CONTRERAS, HE SOON NAMED COLONEL PANTOJA, RECENTLY RETURNED FROM A CONSULAR POST IN ARGENTINA, AS HIS CHIEF DEPUTY.
--PARAGRAPH C(3,4 AND 5):

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A) DELETION OF PART OF PARAGRAPH (3) FOLLOWING "THE LEGAL ATTACHE...": TO US, IT APPEARS QUESTIONABLE TO CHASTISE THE GOC FOR PROVIDING THE US LEGAL ATTACHE IN BUENOS AIRES [redacted]

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WITH INACCURATE OR MISLEADING INFORMATION WHEN ACCORDING TO PROPPER AT LEAST, THE LEGATT'S OWN AGENCY (FBI) FAILED TO INFORM HIM OF NECESSARY INFORMATION.
B) (3) AS FOR GOC DENIALS OF INVOLVEMENT, THAT HAS ALREADY BEEN MENTIONED IN PARAGRAPN A.
C) INCORPORATION OF THE NEXT TWO PARAGRAPHS (4 AND 5) INTO C WAS DEEMED PREFERABLE FROM A STYLISTIC VIEWPOINT.
D) WE SHOULD ALSO DELETE AS INCONSEQUENTIAL THE MATERIAL IN PARAGRPH 4 ON OUR DIFFICULTIES IN LOCATING TOWNLEY. THE OVERRIDING FACT IS THAT THE GOC TURNED TOWNLEY OVER TO US WITHIN TWO MONTHS OF OUR REQUEST.
E) THE SENTENCE "IN RETURN... JURISDICTION OF THE UNITED STATES SHOULD BE DELETED FROM PARAGRAPH 5 SINCE IT IMPLIES UNREASONABLENESS ON THE PART OF THE GOC WHEN, IN FACT, IT STRIKES US AS A VERY REASONABLE REQUEST CONSIDERING TOWNELY'S CLAIMED STATUS AS AN INTELLIGENCE AGENT. ADDITION TO THE LAST SENTENCE OF THE PHRASE "ACCEDED TO OUR REQUEST BY DELIVERING TOWNELY TO U S AUTHORITIES AT SANTIAGO AIRPORT, WHERE WAS EXPELLED FROM CHILE". THE ADDITION OF THE ABOVE PHRASE NOT ONLY CLARIFIES THE EXPULSION OF TOWNLEY, IT ALSO PUTS THE CHILEAN RESPONSE INTO A TRUER PERSPECTIVE.
--PARAGRAPH D(6) : CHANGE OF LAST SENTENCE TO READ: "THE CHILEAN GOVERNMENT COOPERATED BY SENDING...IN RESPONSE TO A U S REQUEST". WE BELIEVE THIS PHRASE IS NECESSARY TO PUT THE OROZCO TRIP INTO WHAT WE UNDERSTAND TO BE ITS PROPER CONTEXT, I.E., THAT THE CHILEAN GOVERNMENT SENT HIM IN RESPONSE TO A U S REQUEST, NOT THAT HE WAS SIMPLY "VISITING" WASHINGTON.
--PARAGRPH E(7):
A) DELETION OF PHRASE"...THEY REMAIN FUGITIVES": WE SUGGEST THE DELETION BECAUSE IT SEEMS NEEDELESSLY REDUNDANT AS THE TEXT ALREADY STATES THEY HAVE NEVER BEEN LOCATED.
B) ADDITION OF PHRASE "ON THE GROUNDS THAT THEY HAD BEEN OBTAINED IN AN ILLEGAL MANNER": THE ADDITIONAL PHRASE IS NECESSARY TO CLARIFY WHY THE ORIGINAL DECISION WAS REVERSED.
C) DELETION OF LAST TWO SENTENCES "IN ARGUMENTS...ASSASSINATIONS" OF PARAGRAPH (7) BECAUSE IT IS IRRELEVANT WHAT DEFENSE ATTORNEYS [redacted]

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INTERESTED IN PROTECTING THEIR CUBAN CLIENTS FROM IMPROPERLY COLLECTED EVIDENCE AGREED TO CONCERNING DINA AND ITS ALLEGED COMPLICITY IN THE LETERLIER/MOFFITT ASSASSINATIONS.
--PARAGRAPH --(8): THE ENTIRE PARAGRAPH SHOULD BE DELETED AS THE ALLEGATIONS ARE TOO SPECULATIVE OR DEBATABLE, AS FOR EXAMPLE, ...FUNDS IN A CONTRERAS BANK ACCOUNT... MAY HVE BEEN GIVEN TO THE INDICTED CUBANS.
--PARAGRAPH F(9): SEE BELOW (PARAGRAPHS 5 AND 6) FOR SPECIAL SECTION BASED ON DISCUSSION WITH ALFREDO ETCHEBERRY.

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-- PARAGRAPH G: (10: REVISION OF THE LAST SENTENCE: THE ADDITIONS SERVE TO CLARIFY THE EXISTING SITUATION, WHILE THE ORIGINAL DRAFT IMPLIES THAT ALL OF THE SANCTIONS WERE LIFTED IN 1981, RATHER THAN ONLY TWO OF THE LESSER MEASURES.
-- PARAGRAPH K: (14 AND 15): INCORPORATION OF TWO PARAGRAPHS INTO ONE: AS THE ORIGINAL DRAFT STOOD, IT WAS EXCESSIVELY LONG, REPETITIOUS AND TENDENTIOUS.
-- PARAGRAPH L: (16 AND 17): INCORPORATION OF TWO PARAGRAPHS INTO ONE: DELETION OF SENTENCE "IN USING THAT...EXTADITION REQUEST": ACCORDING TO EMBASSY READING OF THE US-CHILEAN EXTRADITION TREATY OF 1902, IT SEEMS CLEAR THAT EXTRADITION DECISION SHALL BE BASED UPON: 1) THE LAWS OF THE STATE

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BEING REQUESTED TO GRANT EXTRADITION (ARTICLE III, PARAGRAPH 3; 2) THAT NEITHER CONTRACTING PARTY IS BOUND TO DELIVER ITS OWN CITIZENS (ARTICLE V); AND 3) THAT THE DECISION OF THE STATE BEING REQUESTED SHALL BE FINAL (ARTICLE VI, PARAGRAPH 3). IF THERE ARE LATER AMENDMENTS TO THE 1902 AGREEMENT, WITH WHICH WE ARE NOT FAMILIAR, THEN THE EMBASSY WILL ARGUE, AT A MINIMUM, FOR INCLUSION OF A PHRASE NOTING THAT THE BORQUEZ DECISION, WHILE BASED ON A MINORITY VIEWPOINT, IS A PERFECTLY DEFNSIBLE LEGAL VIEW, ACCORDING TO OUR LAWYER ALFREDO ETCHEBERRY.

-- PARAGRAPH M (18 AND 19): INCORPORATION OF FINAL [redacted]

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TWO PARAGRAPHS OF THE ORIGINAL TEXT AND RETENTION OF ONLY THE TWO MAIN IDEAS, I.E., THAT US AUTHORITIES ACCEPT THE ESSENTIAL VALIDITY OF TOWNLEY'S TESTIMONY AND THAT THE CASE REMAINS PENDING.

A) AS FAR AS WE KNOW, CNI PAYMENTS TO TOWNLEY AND HIS FAMILY IN PARAGRAPH (18) WERE NEVER PROVEN, AND WHETHER OR NOT THEY CONTINUE TODAY IS NEEDLESSLY SPECULATIVE, AS THE USE OF THE CONDITIONAL TENSE SEEMS TO INDICATE.

B) THE REASONS OFFERED FOR ACCEPTING TOWNLEY'S TESTIMONY IN PARAGRAPH (18), "HAD TOWNLEY...LETELIER/MOFFITT ASSASSINATIONS," SEEM TORTURED AT BEST. WE WOULD HOPE THAT US LEGAL AUTHORITIES CONTINUE TO BELIEVE TOWNLEY FOR MORE CONVINCING REASONS THAN THE POSSIBILITY HE WILL SUFFER THE FULL PENALTY OF THE LAW FOR THE LETLIER/MOFFITT ASSASSINATION IF HE IS LYING. IT SEEMS TO US THAT THE PARAGRAPH, AS REWRITTEN (PARAGRAPH L), SAYS ALL THAT IS REALLY NECESSARY ON THE SUBJECT OF TOWNLEY'S CREDIBILITY.

-- PARAGRAPH M (19): DELETION OF THE FINAL PHRASE: "...BUT IT IS...RONNIE MOFFITT." AT NUMEROUS POINTS IN THE DRAFT IT HAS BEEN MADE CLEAR THAT THE CASE IS STILL PENDING IN CHILE, AND ONCE THAT HAS BEEN SAID, THE BOUNDARIES OF FACT HAVE BEEN CROSSED AND WHAT FOLLOWS. WHILE POSSIBLY LIKELY, IS NEEDLESSLY SPECULATIVE AND PREDICTIVE.

5. ALFREDO ETCHEBERRY'S OPINIONS ON SPECIFIC LEGAL POINTS ARE AS FOLLOWS:

-- THE UNDERLINED PORTIONS ON PAGES 6 AND 7 OF THE ORIGINAL DRAFT ARE GENERALLY ACCURATE BUT COULD BE MISLEADING.

-- DIRECT TESTIMONY BASED ON PLEA BARGAINING IS NOT ADMISSIBLE AS EVIDENCE UNDER CHILEAN LAW.

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-- NON-PLEA BARGAINED CONFESSIONS WHICH IMPLICATE OTHER PERSONS CAN BE USED AS DIRECT TESTIMONIAL EVIDENCE.
-- COOPERATION WITH PROSECUTORS MAY BE A MITIGATING

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FACTOR IN DETERMING SENTENCE. EVIDENCE UNCOVERED AS A RESULT OF COOPERATION CAN BE USED, OF COURSE, AS EVIDENCE IN COURT.

6. EMBASSY CONCLUSIONS: THE CHILEAN CRIMINAL JUSTICE SYSTEM HAS NO EXACT COUNTERPART TO PLEA-BARGAINING AS PRACTISED IN THE UNITED STATES BUT THE LINE BETWEEN COOPERATION AND PLEA BARGAINING IS NOT COMPLETELY CLEAR. DIRECT TESTIMONY BASED ON PLEA-BARGAINING IS NOT ADMISSIBLE AS EVIDENCE UNDER CHILEAN LAW. IT IS TRUE THAT COOPERATION WITH THE PROSECUTION, NOT BASED ON ANY EXPLICIT BARGAIN, MAY BE A MITIGATING FACTOR IN DETERMINING THE SENTENCE. COOPERATION MAY BE TAKEN INTO ACCOUNT BUT MITIGATION OF SENTENCE IS NEITHER AUTOMATIC NOR GUARANTEED UNDER CHILEAN LEGAL PROCEDURE. COOPERATION HAS CERTAIN FEATURES OF PLEA BARGAINING (A CERTAIN LIKENESS OR ANALOG) BUT IT IS OF SUCH LIMITED SCOPE AS TO MAKE IT DIFFERENT IN KIND. TO AVOID SEMANTIC ARGUMENT, WE SUGGEST (AND ETCHEBERRY AGREES) DELETION OF THE PHRASE "...A PROCEDURE WITHOUT ANALOG IN THE CHILEAN CRIMINAL JUSTICE SYSTEM." WE RECOMMEND THAT THE PASSAGE BE AMENDED AS WE HAVE REWRITTEN IT ABOVE.

7. AS REGARDS PARAGRAPH 16 OF THE ORIGINAL DRAFT, ETCHEBERRY AGREED THAT EXTRADITION IS GENERALLY BASED ON THE RULES OF EVIDENCE OF THE REQUESTING COUNTRY AND THAT THIS WAS, AS FAR AS HE COULD REMEMBER, THE FIRST TIME A CHILEAN COURT HAD RULED OTHERWISE. HOWEVER, ETCHEBERRY WENT ON TO NOTE THAT THE BORQUEZ DECISION WAS A PERFECTLY DEFENSIBLE, IF MINORITY, POSITION, AS WE HAVE ARGUED IN PARAGRAPH 4 (O) ABOVE. THEBERGE

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